



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,423	03/10/2004	George Christopher Dobrin	9181	4379
27752 7590 07/13/2007 THE PROCTER & GAMBLE COMPANY INTELLECTUAL PROPERTY DIVISION - WEST BLDG. WINTON HILL BUSINESS CENTER - BOX 412 6250 CENTER HILL AVENUE CINCINNATI, OH 45224			EXAMINER GRAHAM, GARY K	
			ART UNIT 1744	PAPER NUMBER
			MAIL DATE 07/13/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/797,423

Applicant(s)

DOBRIN ET AL.

Examiner

Gary K. Graham

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,10-12,14-16,19 and 20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,10-12,14-16,19 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-2, 4-6, 10-12, 14, 16, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Otten et al (US patent 6,257,785) in view of Pike et al (US patent 5,605,749) and Hartwig et al (US patent application publication 2004/0022833).

Art Unit: 1744

The patent to Otten discloses disposable nonwoven mitts (15,fig.6) and gloves (100,fig.1), each comprised of complementary front panels (21,160) and back panels (22,170) having a periphery (45,150) wherein the front panels and back panels meet and are secured to each other along top and side edges thereof. The front panels have an inner surface and an outer surface that is opposite to the inner surface. The back panels have an inner surface and an outer surface that is opposite to the inner surface. See col. 3, lines 23-51. The mitts and gloves further comprise an opening (55,155) for inserting a user's hand. Otten teaches the first or inner surface of the back panel and/or the second or outer surface of the front panel can comprise a fibrous, non-woven material. See col. 4, lines 27-34. Otten also suggests that an additional structural element in the form of fibrous layers (fig.5) may be provided on the front and back panels as a protective component of the mitt and glove. Otten suggests (col.6,lines 48+) that the sheet materials utilized may be made from homogenous or blends of resins and may be single or multiple layers achieved through lamination. Otten specifically discloses that Polyolefins including polyethylene are the preferred material due to low cost and ease of forming. The mitt and glove are comprised of a selectively-activatable sheet material which may be deformed to deliver substances such as gels, pastes, foams, powder, agglomerated particles, perils, microencapsulated liquids, waxes, suspensions, liquids and combinations thereof as well as soaps, detergents, lotions, ointments, creams, health and beauty care products, lubricants, colorants, protectants such as oils and waxes, etc., which may be released when exposed to contact with external surfaces. See col. 4, line 54 through col. 5, line 9, col. 7, lines 44-51 and col.9, lines 6-17. Essentially any substance so desired to be delivered can be.

Art Unit: 1744

Otten discloses all of the above recited subject matter with the exception of the non-woven material being a high loft batting material, the personal care composition comprising no more than about 7% water and one of the sheet members having printed matter thereon.

The patent to Pike discloses one example of a non-woven web for applying similar materials as those disclosed in Otten where a highly lofty structure of the non-woven material is advantageous for absorbing and carrying a large amount of active ingredients (column 7, lines 60-67).

While Otten et al disclose a non-woven web material (column 4, line 30, column 9, line 43), Otten does not specifically disclose that the material be a high loft non-woven batting. While it is well known in the non-woven applicator art to provide non-woven webs from high loft non-woven batting, Otten does not state such. It would have been obvious to one of ordinary skill in the art to provide the non-woven material in Otten as a high loft batting, as is considered well known in the art and as further exemplified by Pike in order to provide for increased absorbing and carrying of large amounts of active ingredients.

The publication to Hartwig discloses a mitt (104, fig.3), wherein playful or instructive indicia (110) is printed thereon.

It would have been obvious to one of skill in the art to provide the mitt of Otten with printed matter thereon, as clearly suggested by Hartwig, to enhance enjoyment of the mitt or provide instructions on how to use the mitt.

With respect to claim 1, and the limitation that the personal care composition comprises no more than about 7% water, at least some of the compositions in Otten are considered to be significantly dry, such as the powders. And some most likely contain no water at all such as the oils and lubricants. In any event, it would have been well within that which one of ordinary skill in the art would have found obvious to select substances suggested by Otten with less than 7% water as

Art Unit: 1744

only the expected results would be attained. As Otten suggests that virtually any substance so desired can be used, to merely employ a substance with little or no water would not have involved invention. One of skill in the art would employ any material so desired, including one with low water content, depending on the particular application. There appears no patentable significance to using a personal care composition with less than 7% water. As to the limitation that the mitt is dry prior to being contacted with water, Otten et al at col. 4, lines 27-32 disclose the mitt can function as an absorbent(dry) and/or a deliverer of embedded substances. The mitt is considered to be dry prior to any contact with water. Further, if the mitt is used with powder substances, it clearly falls within the realm of being "dry". As to the limitation that at least one of said first and second sheet members comprises an adjustment means, Otten teaches that the glove may be deferentially extensible wherein at least a portion of the glove extends and/contracts about a wearer's hand or wrist by utilizing a structural elastic-like film web. See col. 3, lines 52-67; column 4, lines 14-15.

With respect to claim 4, Otten teaches the disposable glove as described above. While Otten does not require the glove to have a particular width between about 80 mm and about 125 mm, such does not appear inventive. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have constructed the glove of Otten in any so desired width, including as claimed, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

Art Unit: 1744

With respect to claims 5-6, Otten teaches that the glove is comprised of a selectively-activable sheet material which may be activated to deliver substances such as gels, pastes, foams, powders, agglomerated particles, perils, microencapsulated liquids, waxes, suspension and liquids which may be released when exposed to contact with external surfaces. See col. 4, line 54 through col. 5, line 9 and col. 7, lines 44-51. As to the limitation such that the first non-woven member comprises a C-folded around a nonwoven high lift batting as recited in claim 6, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have folded the non-woven material of Otten to ensure the mechanical strength of the glove.

With respect to claims 11, 12 and 19, Otten teaches that the personal care composition can comprise health and beauty care compositions. As such it would have been well within the purview of one of ordinary skill in the art to select the claimed surfactants, as such are considered well known and commercially available. See col. 9, lines 6-17. Likewise, with respect to claim 12, as to the adjuvant claimed, Otten teaches the use of fragrances within the personal care compositions.

Claims 3 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Otten et al (US patent 6,257,785) in view of Pike et al (US patent 5,605,749) and Hartwig et al (US patent application publication 2004/0022833) as applied to claims 1, 2 and 14 above and further in view of Shawver et al (US patent 5,540,976).

The references to Otten, Pike and Hartwig disclose all of the above recited subject matter with the exception of the laminate being of three layers comprising elastomeric web sandwiched between two outer layer of non-woven material.

Art Unit: 1744

The patent to Shawver discloses a personal care product such as diapers, training pants, absorbent underpants, wipers and feminine hygiene products made of a laminate of an elastomeric web material sandwiched between layer of non-woven material. See col. 4, line 66 through col. 5, line 14.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the panels of Otten with a laminate having a desired number of layers comprising an elastomeric web sandwiched between two outer layers of non-woven material in order to provide mechanical strength or stability to the panels.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

Art Unit: 1744

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-6, 10-12, 14-16, 19 and 20 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-36 of copending Application No. 10/947,718 in view of Pike et al (US patent 5,605,749) and Hartwig (US patent application publication 2004/0022833). The limitations recited in the claims of the subject application are encompassed in the claims of the copending Application No. 10/947,718 with the exception of the non-woven high loft batting and a composition comprising no more than about 7% of water as recited in the claims of the subject application. However, it is well known in the non-woven applicator art to provide non-woven webs from high loft non-woven batting. Pike discloses all of the above recited subject matter, including one example of a non-woven web for applying similar materials as those disclosed in Otten where the highly lofty structure of the non-woven is advantageous for absorbing and carrying a large amount of active ingredients (column 7, lines 60-67). It would have been obvious to one of ordinary skill in the art to provide the non-woven material in the claims of the '718 application as a high loft batting, as is considered well known in the art and as further exemplified by Pike in order to provide for increased absorbing and carrying of large amounts of active ingredients.

Art Unit: 1744

As to the limitation that the personal care composition comprises no more than about 7% water, it would have been well within the purview of one of ordinary skill in the art to select compositions/substances with less than 7% water, only the expected results would be attained.

This is a provisional obviousness-type double patenting rejection.

Response to Arguments

Applicant's arguments with respect to claims 1, 14 and 20 have been considered but are moot in view of the new ground(s) of rejection. In particular, applicant's addition of printed matter required the new grounds of rejection. As set forth above, Hartwig discloses printed matter on mitts.

Applicant's discussion of the double patenting rejection is noted, however, absent the actual filing of a terminal disclaimer, such rejection will be maintained.

Applicant's discussion of the Otten and Pike rejection is noted, but not persuasive. Applicant appears to set forth that the combination may be proper, but that even so, such still does not teach or suggest a disposable nonwoven cleansing mitt. Applicant proceeds to list the features of the claims. However, applicant does not point out specifically what he thinks is not taught. Merely listing all the features of the claim is not specific enough. Clearly the combination of Otten, Pike and now Hartwig teach a mitt adapted to fit on a user's hand. Both figures 1 and 6 of Otten show a mitt, at least in the broadest sense, that can fit on a user's hand. Thus listing this as a defining feature does not appear accurate. Further, both figures 1 and 6 of Otten show or teach first and second nonwoven sheet members in an overlying relationship. Does applicant feel that this feature is not shown? Clarification is requested.

Art Unit: 1744

Applicant sets forth that the arguments with respect to claim 1 apply equally to claims 14 and 20. However, it is noted that claim 20 does not include all the limitations of claim 1 and 14. Claim 20 does not claim fibers. In the same manner as above, it is not clear how applicant feels claims 20 defines over the applied art.

Applicant's note with respect to claim 19 is appreciated. It appears claim 19 was inadvertently not listed in the heading of the rejection. However, as set forth in the body of the rejection, claim 19 was clearly to be included with the rejection of claim 14, from which it depends.

Applicant's note with respect to a "Topjian" reference is appreciated. It appears such was inadvertently included with the rejection. However, such was not relied upon in any sense and has been removed. The examiner apologizes for any confusion the above may have caused.

Applicant's arguments with respect to the dependant claim rejections are noted, but do not specifically point out anything not discussed above.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be

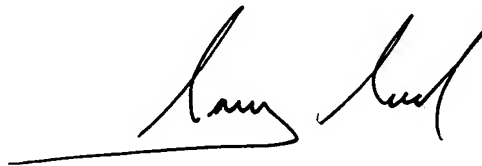
Art Unit: 1744

calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary K. Graham whose telephone number is 571-272-1274. The examiner can normally be reached on Tuesday to Friday (6:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys J. Corcoran can be reached on 571-272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'Gary K. Graham', with a horizontal line extending to the left.

Gary K Graham
Primary Examiner
Art Unit 1744

GKG
09 July 2007